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Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Albania, Argentina, Armenia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Guinea, Hungary, Ireland, Italy, Jordan, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malta, Mexico, Netherlands, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Republic of Moldova, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, Ukraine and United Kingdom of Great Britain and Northern Ireland: revised draft resolution

Protection of human rights and fundamental freedoms while countering terrorism

The General Assembly,

Reaffirming the purposes and principles of the Charter of the United Nations,

Reaffirming also the fundamental importance, including in response to terrorism and the fear of terrorism, of respecting all human rights and fundamental freedoms and the rule of law,

Recalling that States are under the obligation to protect all human rights and fundamental freedoms of all persons,

Acknowledging the important contribution of measures at all levels against terrorism, consistent with international law, in particular international human rights law and refugee and humanitarian law, to the functioning of democratic institutions and the maintenance of peace and security and thereby to the full enjoyment of human rights, as well as the need to continue this fight, including through international cooperation and the strengthening of the role of the United Nations in this respect,

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Deeply deploring the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism, as well as of the violations of international refugee law and international humanitarian law,

Recognizing that the respect for human rights, the respect for democracy and the respect for the rule of law are interrelated and mutually reinforcing,

Recognizing also that all States must fully respect the non-refoulement obligations under international refugee and human rights law, while at the same time bearing in mind relevant exclusion provisions under international refugee law,

Welcoming the various initiatives to strengthen the promotion and protection of human rights in the context of counter-terrorism adopted by the United Nations and regional intergovernmental bodies, as well as by States,

Noting the declarations, statements and recommendations of a number of human rights treaty monitoring bodies and special procedures on the question of the compatibility of counter-terrorism measures with human rights obligations,

Recalling its resolutions 57/219 of 18 December 2002, 58/187 of 22 December 2003 and 59/191 of 20 December 2004, Commission on Human Rights resolutions 2003/68 of 25 April 2003,[1] 2004/87 of 21 April 2004[2] and 2005/80 of 21 April 2005[3] and other relevant resolutions of the General Assembly and the Commission on Human Rights,

Recalling also its resolution 48/141 of 20 December 1993 and, inter alia, the responsibility of the United Nations High Commissioner for Human Rights to promote and protect the effective enjoyment of all human rights,

Reaffirming that acts, methods and practices of terrorism in all its forms and manifestations are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments, and that the international community should take the necessary steps to enhance cooperation to prevent and combat terrorism,[4]

Noting the declaration on the issue of combating terrorism contained in the annex to Security Council resolution 1456 (2003) of 20 January 2003, in particular the statement that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law,

Reaffirming its unequivocal condemnation of all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever committed, regardless of their motivation, as criminal and unjustifiable, and renewing its commitment to strengthen international cooperation to prevent and combat terrorism,

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[1] See *Official Records of the Economic and Social Council, 2003, Supplement No. 3* (E/2003/23), chap. II, sect. A.

[2] Ibid., *2004, Supplement No. 3* (E/2004/23), chap. II, sect. A.

[3] Ibid., *2005, Supplement No. 3* (E/2005/23 (Part I)), chap. II, sect. A.

[4] See sect. I, para. 17, of the Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights on 25 June 1993.

Stressing that everyone is entitled to all the rights and freedoms recognized in the Universal Declaration of Human Rights[5] without distinction of any kind, including on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

1. *Reaffirms* that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law;

2. *Deplores* the suffering caused by terrorism to the victims and their families, and expresses its profound solidarity with them;

3. *Reaffirms* the obligation of States, in accordance with article 4 of the International Covenant on Civil and Political Rights,[6] to respect certain rights as non-derogable in any circumstances, recalls, in regard to all other Covenant rights, that any measures derogating from the provisions of the Covenant must be in accordance with that article in all cases, and underlines the exceptional and temporary nature of any such derogations;[7]

4. *Calls upon* States to raise awareness about the importance of these obligations among national authorities involved in combating terrorism;

5. *Urges* States to fully respect non-refoulement obligations under international refugee and human rights law and, at the same time, to review, with full respect for these obligations and other legal safeguards, the validity of a refugee status decision in an individual case if credible and relevant evidence comes to light that indicates that the person in question has committed any criminal acts, including terrorist acts, falling under the exclusion clauses under international refugee law;

6. *Welcomes* the establishment by the Commission on Human Rights in its resolution 2005/80[3] of the mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;

7. *Reaffirms* that it is imperative that all States work to uphold and protect the dignity of individuals and their fundamental freedoms, as well as democratic practices and the rule of law, while countering terrorism, as stated in the report of the Secretary-General submitted pursuant to General Assembly resolution 58/187;[8]

8. *Takes note with appreciation* of the study of the United Nations High Commissioner for Human Rights submitted pursuant to resolution 58/187;[9]

9. *Encourages* States to make available to relevant national authorities the "Digest of Jurisprudence of the United Nations and Regional Organizations on the Protection of Human Rights while Countering Terrorism" and to take into account its content, and requests the High Commissioner to update and publish it periodically;

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[5] Resolution 217 A (III).

[6] See resolution 2200 (XXI), annex.

[7] See, for example, General Comment No. 29 on states of emergency adopted by the Human Rights Committee on 24 July 2001.

[8] E/CN.4/2004/91.

[9] A/59/428.

10. *Welcomes* the ongoing dialogue established in the context of the fight against terrorism between the Security Council and its Counter-Terrorism Committee and the relevant bodies for the promotion and protection of human rights, and encourages the Security Council and its Counter-Terrorism Committee to strengthen the links and to continue to develop cooperation with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur of the Commission on Human Rights on the promotion and protection of human rights and fundamental freedoms while countering terrorism and other relevant special procedures and mechanisms of the Commission, giving due regard to the promotion and protection of human rights in the ongoing work pursuant to relevant Security Council resolutions relating to terrorism;

11. *Stresses* that, while developing the elements of a comprehensive, coordinated and consistent counter-terrorism strategy, as agreed at the 2005 World Summit,[10] full consideration should be given throughout the process to the protection of human rights and fundamental freedoms and to the provisions of international humanitarian law and refugee law;

12. *Requests* all relevant special procedures and mechanisms of the Commission on Human Rights, as well as the United Nations human rights treaty bodies, to cooperate within their mandates with the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and encourages the Special Rapporteur to work closely with them to coordinate efforts, where appropriate, in order to promote a consistent approach on this subject;

13. *Encourages* States, while countering terrorism, to take into account relevant United Nations resolutions and decisions on human rights, and encourages them to consider the recommendations of the special procedures and mechanisms of the Commission on Human Rights and the relevant comments and views of United Nations human rights treaty bodies;

14. *Takes note with appreciation* of the report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism;[11]

15. *Welcomes* the report of the Secretary-General submitted pursuant to General Assembly resolution 59/191;[12]

16. *Also welcomes* the report of the Special Rapporteur submitted pursuant to Commission on Human Rights resolution 2005/80,[13] takes note of the four features emphasized of his mandate, complementarity, comprehensiveness, its proactive nature and its thematic approach, and requests the Special Rapporteur to report regularly to the General Assembly and to the Commission on Human Rights;

17. *Requests* all Governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated, including by reacting promptly to the Special Rapporteur's urgent appeals and providing the information requested;

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[10] See resolution 60/1.

[11] E/CN.4/2005/103.

[12] A/60/374.

[13] A/60/370.

18. *Requests* the High Commissioner, making use of existing mechanisms, to continue:

(a) To examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources;

(b) To make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism;

(c) To provide assistance and advice to States, upon their request, on the protection of human rights and fundamental freedoms while countering terrorism, as well as to relevant United Nations bodies;

19. *Requests* the Secretary-General to submit a report on the implementation of the present resolution to the Commission on Human Rights at its sixty-second session and to the General Assembly at its sixty-first session.